

107TH CONGRESS
1ST SESSION

S. 532

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2001

Mr. DORGAN (for himself, Mr. BAUCUS, Mr. BURNS, Mr. DASCHLE, Mr. JOHNSON, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REGISTRATION OF CANADIAN PESTICIDES BY**
4 **STATES.**

5 (a) IN GENERAL.—Section 24 of the Federal Insecti-
6 cide, Fungicide, and Rodenticide Act (7 U.S.C. 136v) is
7 amended by adding at the end the following:

1 “(d) REGISTRATION OF CANADIAN PESTICIDES BY
2 STATES.—

3 “(1) DEFINITIONS.—In this subsection:

4 “(A) CANADIAN PESTICIDE.—The term
5 ‘Canadian pesticide’ means a pesticide that—

6 “(i) is registered for use as a pesticide
7 in Canada;

8 “(ii) is identical or substantially simi-
9 lar in its composition to a comparable do-
10 mestic pesticide registered under section 3;
11 and

12 “(iii) is registered in Canada by the
13 registrant of the comparable domestic pes-
14 ticide or by an affiliated entity of the reg-
15 istrant.

16 “(B) COMPARABLE DOMESTIC PES-
17 TICIDE.—The term ‘comparable domestic pes-
18 ticide’ means a pesticide—

19 “(i) that is registered under section 3;

20 “(ii) the registration of which is not
21 under suspension;

22 “(iii) that is not subject to—

23 “(I) a notice of intent to cancel
24 or suspend under any provision of this
25 Act;

1 “(II) a notice for voluntary can-
 2 cellation under section 6(f); or

3 “(III) an enforcement action
 4 under any provision of this Act;

5 “(iv) that is used as the basis for
 6 comparison for the determinations required
 7 under paragraph (4);

8 “(v) that is registered for use on each
 9 site of application for which registration is
 10 sought under this subsection;

11 “(vi) for which no use is the subject
 12 of a pending interim administrative review
 13 under section 3(c)(8);

14 “(vii) that is not subject to any limita-
 15 tion on production or sale agreed to by the
 16 Administrator and the registrant or im-
 17 posed by the Administrator for risk mitiga-
 18 tion purposes; and

19 “(viii) that is not classified as a re-
 20 stricted use pesticide under section 3(d).

21 “(2) AUTHORITY TO REGISTER CANADIAN PES-
 22 TICIDES.—

23 “(A) IN GENERAL.—A State may register
 24 a Canadian pesticide for distribution and use in
 25 the State if the registration—

1 “(i) complies with this subsection;

2 “(ii) is consistent with this Act; and

3 “(iii) has not previously been dis-
4 approved by the Administrator.

5 “(B) PRODUCTION OF ANOTHER PES-
6 TICIDE.—A pesticide registered under this sub-
7 section shall not be used to produce a pesticide
8 registered under section 3 or subsection (c).

9 “(C) EFFECT OF REGISTRATION.—A reg-
10 istration of a Canadian pesticide by a State
11 under this subsection—

12 “(i) shall be deemed to be a registra-
13 tion under section 3 for all purposes of this
14 Act; and

15 “(ii) shall authorize distribution and
16 use only within that State.

17 “(D) REGISTRANT.—

18 “(i) IN GENERAL.—A State may reg-
19 ister a Canadian pesticide under this sub-
20 section on its own motion or on application
21 of any person.

22 “(ii) STATE OR APPLICANT AS REG-
23 ISTRANT.—

24 “(I) STATE.—If a State registers
25 a Canadian pesticide under this sub-

1 section on its own motion, the State
 2 shall be considered to be the reg-
 3 istrant of the Canadian pesticide for
 4 all purposes of this Act.

5 “(II) APPLICANT.—If a State
 6 registers a Canadian pesticide under
 7 this subsection on application of any
 8 person, the person shall be considered
 9 to be the registrant of the Canadian
 10 pesticide for all purposes of this Act.

11 “(3) REQUIREMENTS FOR REGISTRATION
 12 SOUGHT BY PERSON.—A person seeking registration
 13 by a State of a Canadian pesticide in a State under
 14 this subsection shall—

15 “(A) demonstrate to the State that the Ca-
 16 nadian pesticide is identical or substantially
 17 similar in its composition to a comparable do-
 18 mestic pesticide; and

19 “(B) submit to the State a copy of—

20 “(i) the label approved by the Pes-
 21 ticide Management Regulatory Agency for
 22 the Canadian pesticide; and

23 “(ii) the label approved by the Admin-
 24 istrator for the comparable domestic pes-
 25 ticide.

1 “(4) STATE REQUIREMENTS FOR REGISTRA-
 2 TION.—A State may register a Canadian pesticide
 3 under this subsection if the State—

4 “(A) obtains the confidential statement of
 5 formula for the Canadian pesticide;

6 “(B) determines that the Canadian pes-
 7 ticide is identical or substantially similar in
 8 composition to a comparable domestic pesticide;

9 “(C) for each food or feed use authorized
 10 by the registration—

11 “(i) determines that there exists an
 12 adequate tolerance or exemption under the
 13 Federal Food, Drug, and Cosmetic Act (21
 14 U.S.C. 301 et seq.) that permits the resi-
 15 dues of the pesticide on the food or feed;
 16 and

17 “(ii) identifies the tolerances or ex-
 18 emptions in the notification submitted
 19 under subparagraph (E);

20 “(D) obtains a label approved by the Ad-
 21 ministrator that—

22 “(i)(I) includes all statements, other
 23 than the establishment number, from the
 24 approved labeling of the comparable do-

1 mestic pesticide that are relevant to the
2 uses registered by the State; and

3 “(II) excludes all labeling statements
4 relating to uses that are not registered by
5 the State;

6 “(ii) identifies the State in which the
7 product may be used;

8 “(iii) prohibits sale and use outside
9 the State identified under clause (ii);

10 “(iv) includes a statement indicating
11 that it is unlawful to use the Canadian
12 pesticide in the State in a manner that is
13 inconsistent with the labeling approved by
14 the Administrator under this subsection;
15 and

16 “(v) identifies the establishment num-
17 ber of the establishment in which the label-
18 ing approved by the Administrator will be
19 affixed to each container of the Canadian
20 pesticide; and

21 “(E) not later than 10 business days after
22 the issuance by the State of the registration,
23 submit to the Administrator a written notifica-
24 tion of the action of the State that includes—

1 “(i) a description of the determination
2 made under this paragraph;

3 “(ii) a statement of the effective date
4 of the registration;

5 “(iii) a confidential statement of the
6 formula of the registered pesticide; and

7 “(iv) a final printed copy of the label-
8 ing approved by the Administrator.

9 “(5) DISAPPROVAL OF REGISTRATION BY AD-
10 MINISTRATOR.—

11 “(A) IN GENERAL.—The Administrator
12 may disapprove the registration of a Canadian
13 pesticide by a State under this subsection if the
14 Administrator determines that the registration
15 of the Canadian pesticide by the State—

16 “(i) does not comply with this sub-
17 section or the Federal Food, Drug, and
18 Cosmetic Act (21 U.S.C. 301 et seq.); or

19 “(ii) is inconsistent with this Act.

20 “(B) EFFECTIVE PERIOD.—If the Admin-
21 istrator disapproves a registration by a State
22 under this subsection by the date that is 90
23 days after the date on which the State issues
24 the registration, the registration shall be inef-
25 fective after the 90th day.

1 “(6) LABELING OF CANADIAN PESTICIDES.—

2 “(A) IN GENERAL.—Each container con-
3 taining a Canadian pesticide registered by a
4 State shall bear the label that is approved by
5 the Administrator under this subsection.

6 “(B) DISPLAY OF LABEL.—The label shall
7 be securely attached to the container and shall
8 be the only label visible on the container.

9 “(C) ORIGINAL CANADIAN LABEL.—The
10 original Canadian label on the container shall
11 be preserved underneath the label approved by
12 the Administrator.

13 “(D) PREPARATION AND USE OF LA-
14 BELS.—After a Canadian pesticide is registered
15 under this subsection, the registrant shall—

16 “(i) prepare labels approved by the
17 Administrator for the Canadian pesticide;
18 and

19 “(ii) conduct or supervise all labeling
20 of the Canadian pesticide with the ap-
21 proved labeling.

22 “(E) REGISTERED ESTABLISHMENTS.—
23 Labeling of a Canadian pesticide under this
24 subsection shall be conducted at an establish-

1 ment registered by the registrant under section
2 7.

3 “(F) ESTABLISHMENT REPORTING RE-
4 QUIREMENTS.—An establishment registered for
5 the sole purpose of labeling under this para-
6 graph shall be exempt from the reporting re-
7 quirements of section 7(c).

8 “(7) REVOCATION.—

9 “(A) IN GENERAL.—After the registration
10 of a Canadian pesticide, if the Administrator
11 finds that the Canadian pesticide is not iden-
12 tical or substantially similar in composition to
13 a comparable domestic pesticide, the Adminis-
14 trator may issue an emergency order revoking
15 the registration of the Canadian pesticide.

16 “(B) TERMS OF ORDER.—The order—

17 “(i) shall be effective immediately;

18 “(ii) may prohibit the sale, distribu-
19 tion, and use of the Canadian pesticide;
20 and

21 “(iii) may require the registrant of the
22 Canadian pesticide to purchase and dispose
23 of any unopened product subject to the
24 order.

1 “(C) REQUEST FOR HEARING.—Not later
2 than 10 days after issuance of the order, the
3 registrant of the Canadian pesticide subject to
4 the order may request a hearing on the order.

5 “(D) FINAL ORDER.—If a hearing is not
6 requested in accordance with subparagraph (C),
7 the order shall become final and shall not be
8 subject to judicial review.

9 “(E) JUDICIAL REVIEW.—If a hearing is
10 requested on the order, judicial review may be
11 sought only at the conclusion of the hearing on
12 the order and following the issuance by the Ad-
13 ministrator of a final revocation order.

14 “(F) PROCEDURE.—A final revocation
15 order issued following a hearing shall be review-
16 able in accordance with section 16.

17 “(8) SUSPENSION OF STATE AUTHORITY TO
18 REGISTER CANADIAN PESTICIDES.—

19 “(A) IN GENERAL.—If the Administrator
20 finds that a State that has registered 1 or more
21 Canadian pesticides under this subsection is not
22 capable of exercising adequate controls to en-
23 sure that registration under this subsection is
24 consistent with this subsection, other provisions
25 of this Act, or the Federal Food, Drug, and

1 Cosmetic Act (21 U.S.C. 301 et seq.), or has
2 failed to exercise adequate controls of 1 or more
3 Canadian pesticides registered under this sub-
4 section, the Administrator may suspend the au-
5 thority of the State to register Canadian pes-
6 ticides under this subsection until such time as
7 the Administrator determines that the State
8 can and will exercise adequate control of the
9 Canadian pesticides.

10 “(B) NOTICE AND OPPORTUNITY TO RE-
11 SPOND.—Before suspending the authority of a
12 State to register a Canadian pesticide, the Ad-
13 ministrator shall—

14 “(i) notify the State that the Adminis-
15 trator proposes to suspend the authority
16 and the reasons for the proposed suspen-
17 sion; and

18 “(ii) before taking final action to sus-
19 pend authority under this subsection, pro-
20 vide the State an opportunity to respond to
21 the proposal to suspend within 30 calendar
22 days after the State receives notice under
23 clause (i).

1 “(9) LIMITS ON LIABILITY.—No action for
2 monetary damages may be heard in any Federal
3 court against—

4 “(A) a State acting as a registering agency
5 under the authority of and consistent with this
6 subsection for injury or damage resulting from
7 the use of a product registered by the State
8 under this subsection; or

9 “(B) a registrant for damages resulting
10 from adulteration or compositional alteration of
11 a Canadian pesticide registered under this sub-
12 section if the registrant did not have and could
13 not reasonably have obtained knowledge of the
14 adulteration or compositional alteration.

15 “(10) DISCLOSURE OF INFORMATION BY AD-
16 MINISTRATOR TO THE STATE.—The Administrator
17 may disclose to a State that is seeking to register a
18 Canadian pesticide in the State information that is
19 necessary for the State to make the determinations
20 required by paragraph (4) if the State certifies to
21 the Administrator that the State can and will main-
22 tain the confidentiality of any trade secrets and com-
23 mercial or financial information provided by the Ad-
24 ministrator to the State under this subsection to the
25 same extent as is required under section 10.

1 “(11) PROVISION OF INFORMATION BY REG-
2 ISTRANTS OF COMPARABLE DOMESTIC PES-
3 TICIDES.—

4 “(A) IN GENERAL.—On request by a
5 State, the registrant of a comparable domestic
6 pesticide shall provide to the State that is seek-
7 ing to register a Canadian pesticide in the State
8 under this subsection information that is nec-
9 essary for the State to make the determinations
10 required by paragraph (4) if the State certifies
11 to the registrant that the State can and will
12 maintain the confidentiality of any trade secrets
13 and commercial and financial information pro-
14 vided by the registrant to the State under this
15 subsection to the same extent as is required
16 under section 10.

17 “(B) PENALTY FOR NONCOMPLIANCE.—

18 “(i) IN GENERAL.—If the registrant
19 of a comparable domestic pesticide fails to
20 provide to the State, not later than 15
21 days after receipt of a written request by
22 the State, information possessed by or rea-
23 sonably accessible to the registrant that is
24 necessary to make the determinations re-
25 quired by paragraph (4), the Administrator

1 may assess a penalty against the registrant
2 of the comparable pesticide.

3 “(ii) AMOUNT.—The amount of the
4 penalty shall be equal to the product ob-
5 tained by multiplying—

6 “(I) the difference between the
7 per-acre cost of the application of the
8 comparable domestic pesticide and the
9 application of the Canadian pesticide,
10 as determined by the Administrator;
11 and

12 “(II) the number of acres in the
13 State devoted to the commodity for
14 which the State registration is sought.

15 “(C) NOTICE AND OPPORTUNITY FOR
16 HEARING.—No penalty under this paragraph
17 shall be assessed unless the registrant is given
18 notice and opportunity for a hearing in accord-
19 ance with section 14(a)(3).

20 “(D) ISSUES AT HEARING.—The only
21 issues for resolution at the hearing shall be—

22 “(i) whether the registrant of the
23 comparable domestic pesticide failed to
24 timely provide to the State the information
25 possessed by or reasonably accessible to

1 the registrant that was necessary to make
2 the determinations required by paragraph
3 (4); and

4 “(ii) the amount of the penalty.

5 “(12) PENALTY FOR DISCLOSURE BY STATE.—

6 “(A) IN GENERAL.—The State shall not
7 make public information obtained under para-
8 graph (10) or (11) that is privileged and con-
9 fidential and contains or relates to trade secrets
10 or commercial or financial information.

11 “(B) DISCLOSURE.—Any State employee
12 who willfully discloses information described in
13 subparagraph (A) shall be subject to penalties
14 described in section 10(f).

15 “(13) DATA COMPENSATION.—A State or per-
16 son registering a Canadian pesticide under this sub-
17 section shall not be liable for compensation for data
18 supporting the registration if the registration of the
19 Canadian pesticide in Canada and the registration of
20 the comparable domestic pesticide are held by the
21 same registrant or by affiliated entities.

22 “(14) FORMULATION CHANGES.—

23 “(A) IN GENERAL.—The registrant of a
24 comparable domestic pesticide shall notify the
25 Administrator of any change in the formulation

1 of a comparable domestic pesticide or a Cana-
2 dian pesticide registered by the registrant or an
3 affiliated entity not later than 30 days before
4 any sale or distribution of the pesticide con-
5 taining the new formulation.

6 “(B) STATEMENT OF FORMULA.—The reg-
7 istrant of the comparable domestic pesticide
8 shall submit, with the notice required under
9 subparagraph (A), a confidential statement of
10 the formula for the new formulation if the reg-
11 istrant has possession of or reasonable access to
12 the information.

13 “(C) SUSPENSION OF REGISTRATION FOR
14 NONCOMPLIANCE.—

15 “(i) IN GENERAL.—If the registrant
16 fails to provide notice or submit a con-
17 fidential statement of formula as required
18 by this paragraph, the Administrator may
19 issue a notice of intent to suspend the reg-
20 istration of the comparable domestic pes-
21 ticide for a period of not less than 1 year.

22 “(ii) EFFECTIVE DATE.—The suspen-
23 sion shall become final not later than the
24 end of the 30-day period beginning on the
25 date of the issuance by the Administrator

of the notice of intent to suspend the registration, unless during the period the registrant requests a hearing.

“(iii) HEARING PROCEDURE.—If a hearing is requested, the hearing shall be conducted in accordance with section 6(d).

“(iv) ISSUES.—The only issues for resolution at the hearing shall be whether the registrant has failed to provide notice or submit a confidential statement of formula as required by this paragraph.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136v(c)) is amended—

(A) in paragraph (1), by inserting “IN GENERAL.—” after “(1)”;

(B) in paragraph (2), by inserting “DISAPPROVAL.—” after “(2)”;

(C) in paragraph (3), by inserting “CONSISTENCY WITH FEDERAL FOOD, DRUG, AND COSMETIC ACT.—” after “(3)”; and

(D) by striking “(4) If the Administrator” and inserting the following:

1 “(4) SUSPENSION OF AUTHORITY TO REGISTER
2 PESTICIDES.—Except as provided in subsection
3 (d)(8), if the Administrator”.

4 (2) The table of contents in section 1(b) of the
5 Federal Insecticide, Fungicide, and Rodenticide Act
6 (7 U.S.C. prec. 121) is amended by striking the item
7 relating to section 24(c) and inserting the following:

 “(c) Additional uses.

 “(1) In general.

 “(2) Disapproval.

 “(3) Consistency with Federal Food, Drug, and Cosmetic
 Act.

 “(4) Suspension of authority to register pesticides.

 “(d) Registration of Canadian pesticides by States.

 “(1) Definitions.

 “(2) Authority to register Canadian pesticides.

 “(3) Requirements for registration sought by person.

 “(4) State requirements for registration.

 “(5) Disapproval of registration by Administrator.

 “(6) Labeling of Canadian pesticides.

 “(7) Revocation.

 “(8) Suspension of State authority to register Canadian
 pesticides.

 “(9) Limits on liability.

 “(10) Disclosure of information by Administrator to the
 State.

 “(11) Provision of information by registrants of com-
 parable domestic pesticides.

 “(12) Penalty for disclosure by State.

 “(13) Data compensation.

 “(14) Formulation changes.”.

8 (c) EFFECTIVE DATE.—This section and the amend-
9 ments made by this section take effect 180 days after the
10 date of enactment of this Act.

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